

Recommendations from the Land Use Leadership Council: A private sector perspective



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Though our organizations represent a broad range of business interests we share the common goals of protecting private property rights as guaranteed by the Constitution and providing the opportunity for all Michigan residents to freely buy, sell, and use their property within sensible, legal limits. We recognize the importance of land use issues in Michigan, and our associations have played an active role in the discussion of those issues.

The Governor's Land Use Council provided the State of Michigan with a useful forum in which varying interests were assembled with the common goal of establishing better land use policies. In many ways, however, the land use debate is just in its infancy. While the Council's final report has been called one of consensus, the nature of the charge to the Council and the lack of a minority report, withheld real explanations of the reservations and objections by stakeholders on each major issue. Many of the reservations and objections depend upon details not yet negotiated, most of which are contentious in nature (e.g. cost, source of revenue, etc.). The process allowed the group to reach a general agreement on broad themes while glossing over potentially divisive details.

Individual members of the Council filed over 230 objections or reservations to the 150 recommendations made in the report. The problem of accurately portraying the decisions of the Council was complicated by the fact the Council co-chairs defined "consensus" as meaning an opinion or position reached by 14 out of the 26 Council members. No formal voting took place within the Council. Discussion on issues ceased when the 14 votes were tallied, usually by a show of hands, and no record of the voting was kept.

Our organizations have joined together to give a fair and accurate account from the private sector's perspective, some of those issues contained in the Governor's Land Use Council. Among these, the paper reflects those issues we support and those we oppose. Where the reservations and objections by our respective organizations may appear as minor footnotes in the final Land Use Council report, they are the most critical aspects of understanding its implications.

ITEMS OF SUPPORT

1. Urban Revitalization

Our state can no longer afford to allow our inner cities to continue to deteriorate and the council was correct in finding that revitalization of Michigan's urban communities needs to be the combined effort of both the public and the private sector. All of our organizations support urban revitalization through enhanced brownfield redevelopment tools, land bank initiatives, optimization of existing infrastructure, and better use of Michigan's Rehabilitation Code for existing buildings. Of particular interest is the call for a "redevelopment readiness standard." Such a standard would allow local units of government to be measured on performance and promote their ability to compete for private redevelopment investment.

2. Market Options for Housing

The Council recommends setting a higher density level for all developments that have sewer, water, and improved roads. Our organizations believe that the preservation of open space is directly tied to increased density and a movement away from mandatory large lot zoning. Michigan should be creating market rate affordable housing options in both urban and rural areas by removing the governmental and regulatory barriers that increase the price of development and utilizing government housing subsidies.

3. Road Design Standards

The state should authorize and encourage MDOT, and local communities to use alternative road design standards including allowing flexible design and protection from liability for road authorities in pursuing those designs. Allowing flexible road designs will result in less disruption of natural environment, less expensive development projects, and more alternatives in development design.

4. Expedite Development Review Process and Approval Times

We support the council's recommendation of a comprehensive review of the Land Division Act. The review and streamlining of the administrative processes of the Land Division Act called for in the report has already been completed and is now Public Act 525 of 2004.

In no cases do our organizations support eliminating all exempt divisions. However, we could potentially support the creation of a new, simplified platting process for minor projects which could replace exempt divisions in some circumstances.

5. Lower Tax Rates on Farmland

Our organizations support the Council's position that reducing property taxes on farmland is an incentive to encourage land owners to keep their land in agriculture.

While we favor the Council's recommendations on creating Agricultural Production Areas we are strongly opposed to any recapture provisions which exceed the tax benefits received by the land owner under the program. The best way to preserve farmland is by letting farmers make a profit. There is a need to focus on increasing value-added agricultural operations.

6. Housing Impact Statements

Economic studies have shown that state and local regulations have a major effect on the provisions of affordable housing. The Council is correct in insisting that all new regulations on every level of government should be reviewed for their impact on housing and that regulatory barriers that add to the cost of housing or have the effect of discouraging a variety of housing types, like minimum lot sizes as opposed to density based zoning, should be eliminated.

We also agree with the council the governor should direct the Michigan State Housing Development Authority director to prepare every two years, in conjunction with private housing sector input, a housing needs report of housing markets in Michigan that defines market areas, demographics, and number of homeowners and renters, and identifies housing need by income category.

7. Density Enhancement Programs

The Legislature has passed and the governor has signed three separate but complementary sets of legislation which allow for the transfer of development rights from one parcel of property to another.

Public Act 226 of 2003, the Joint Municipal Planning Act, allows any combination of township, village and city governments to form a joint planning commission for a portion or all of their respective jurisdictions.

Public Acts 227, 228 and 229 of 2003 amended the state's zoning acts to allow "non-contiguous" open space, open space located outside the boundaries of a development, to be part of a planned unit development agreement.

Public Acts 577, 578 and 579 of 2004 allow for contract zoning between developers and local units of government. These contracts can also contain requirement for preserving open space both within the project and outside its boundaries.

Taken together these seven acts, each one supported by our respective associations, fulfill the Council's recommendation for the establishment of *"market-driven density enhancement programs involving the preservation of land in one part of a community by means of a density transfer to another part of the same community or to a different community via the terms of a coordinated agreement."*

8. Regional Cooperation

The Council recommends that large scale infrastructure should be coordinated at the multi-jurisdictional level and managed in accordance with capital improvement programs. There are areas, particularly involving transportation, air quality, and large scale infrastructure where the need for voluntary cooperation is long overdue. However, any present law and future legislation should tread lightly so as to not create an additional layer of bureaucracy for stakeholders and should reward such voluntary cooperation.

9. Public Facility Locations

We support the Council's focus on the siting of public facilities, including schools, in shaping land use at the local government level. There is a need to require government buildings to comply with master plans and infrastructure plans adopted by local governments.

10. Reformulation of Revenue Sharing

The revenue sharing formula is set to sunset in 2006. The council recommends that the Legislature review the relationship between revenue sharing and land use. Revenue sharing should be directly tied to performance of local government duties and responsibilities, including, but not limited to, permit approvals, ongoing maintenance of infrastructure, allowance for alternative design standards, and increased density.

11. Local Government Recall and Referendum

The state needs to enact tougher standards for recall and referendum within its communities. The current ease of the process creates ambiguity for local government, developers, and citizens alike. Local elected officials should be encouraged to make certain and lasting planning and zoning decisions without the fear of recall, referendum, or legal action.

WHERE THE REPORT FALLS SHORT

1. Ignoring Urban Problems

The report fails to come to grips with the underlying conditions contributing to urban problems such as crime, education, taxation, and services. Our organizations believe that improvement of our urban areas rests on the commitment to addressing these problems. The report ignores these basic conditions and suggests revitalization of our urban cores by establishing "cool cities."

2. Improvements to Existing Purchase of Development Rights Funding

The report makes the argument that the funding for the state's current PDR program is inadequate and is in need of a "dedicated and consistent funding source." There are no references in the report pertaining to possible areas of revenue for funding or control mechanisms. This causes much concern, especially in a time when Michigan

is faced with significant budgetary pressure. Furthermore, PDR's create higher housing costs by limiting the supply housing available. Overreaching programs pose the danger of creating "growth boundaries" that increase housing prices and restrict buyers' choices. As a result Michigan counties may experience limited housing options for low and middle income families.

Perhaps the best solution is to improve the existing PDR enabling statutes to include:

- 1) Any PDR program should be on the general election ballot so that the voters of the district may decide to use general fund dollars to administer the program.
- 2) Local government consideration of the effects of such a program on the local school systems, future growth potential of the population, the local economy, and inclusions in the comprehensive plan for review.
- 3) A PDR program should not be in perpetuity but should contain a "buyback" provision. The discretion of local governments to hold land in perpetuity limits the options of private property owners and can restrict the plan and design of our communities.
- 4) Consultation with adjoining units of government on the potential impacts of the program.

3. Insufficient Education

Land use education is not sufficiently addressed within the report. Proper education for land use officials is critical to facilitating good land use decisions and planning in Michigan. Planners and local officials need a fundamental change in their theory and behavior in switching from planning on a micro scale to planning on a macro scale. Change is not going to occur unless home rule changes its approach and adds timeliness and certainty to land use decisions.

4. Adequate Public Facilities Ordinance

The use of adequate public facilities ordinances to pay for infrastructure cost is an example of increased state regulation called for throughout the section on planning and development. Unchecked, adequate public facilities ordinances can become synonymous with "concurrency," where a local government initiates a fee for a select few to pay for infrastructure that benefits all, while others get the same benefits with their only burden of cost accrued via general taxes. Home rule should hold a timely review of their capital expenditures on a yearly basis. Public facilities ordinances have the potential to propose further regulation, while fostering basic inequity in cost distribution for infrastructure.

5. Aesthetic Controls

Aesthetic controls on house design have the potential to infringe on a citizen's fundamental democratic rights. This recommendation is made under the premise that the government not only knows what the best design for your home may be, but that the government has the right to dictate to a homeowner how their house should look. However, it is not unreasonable for government to provide for minimum restrictions; particularly when dealing with setbacks, height restrictions, and percentage of impervious surface.

6. Transportation Funds

We do not support the Council's recommendation that the full 10% of the Michigan Transportation Fund (MTF) and the full 25% of auto related sales tax be used to support the Comprehensive Transportation Fund (Public Transportation). A recent public opinion survey indicated that 70% of Michigan's voters do not support taking road repair dollars to support mass transit. Utilizing the full 10% of the MTF would mean a shift in \$30 million from roads to mass transit. At a time when road repair is needed to keep Michigan's economy moving we oppose taking funding away from roads to support inefficient and underutilized public transportation systems.

7. Environmental Bond

Our organizations have concerns about passing additional environmental bonds. Michigan's debt per capita has increased dramatically over the past 20 years. The state still has some Clean Michigan Initiative bonds and almost the entire \$1 billion Sewer Initiative bonds, yet to sell.

Given the current budget situation and all of the outstanding bonds previously approved by the voters, our organizations would cautiously approach any consideration to leverage further debt.

In addition to these specific issues the report is still weighed down by a few general concepts that need to be addressed in assessing any possible legislation. The first of which is its failure to address spending and cost. There are a tremendous number of new spending programs suggested with no estimate of their cost, identification of possible revenue sources, or even a clear priority. Despite the efforts of some Council members to address these issues, the report does not balk at spending state money in almost every instance, and we are extremely wary of how these programs might be funded. Many of the recommendations are not practical on any political or fiscal level given the recent years' budget shortfalls. Delving beneath the surface might suggest that many of the recommendations without documented reservations or objections were not contested because they quite simply were not practical in light of cost.

Second, the planning and development portion of the report relies heavily on enhancement of regulation. Basic smart-growth principals are overshadowed by a new range of schemes including controlling billboards, cell towers, antennas, and permanent and secure state-funding for cultural, artistic, and historical assets and institutions. If implemented, many of these policy recommendations have the effect of picking winners and losers for economic growth.

The Michigan Association of Home Builders, Michigan Chamber of Commerce, and the Michigan Association of REALTORS® anticipate working with the Legislature and the administration toward a more prosperous and equitable Michigan through the creation of land use policy that benefits all Michigan citizens. We are optimistic that all parties can work together and succeed in implementing those items in the report that are fiscally and politically possible. The Michigan Land Use Leadership Council has provided a firm foundation to build upon. This is a positive first step of an investment in Michigan's

future through the development of sound land use policy.